

# A Tun Datuk Patinggi Haji Abdul-Rahman Ya'kub v Bre Sdn Bhd & Ors

HIGH COURT (KUCHING) — CIVIL SUIT NO KG 400-1986  
RICHARD MALANJUM J

B 28 FEBRUARY 1995

*Tort — Defamation — Libel — Publication of defamatory letter in newspaper — Whether letter was capable of being and was in fact defamatory of plaintiff — Whether letter calculated to expose plaintiff to hatred, ridicule or contempt in mind of reasonable man or would tend to lower him in estimation of right-thinking members of society generally*

*Tort — Defamation — Defence — Justification — Publication of defamatory letter in newspaper — Whether defendants could prove truth of defamatory imputations on balance of probabilities — Whether defendants could rely on general and specific wrongdoings of plaintiff — Defamation Act 1957 s 8*

*Tort — Defamation — Defence — Fair comment — Publication of defamatory letter in newspaper — Whether defendants could prove publication was fair comment on balance of probabilities — Whether publication was a comment — Whether publication was a matter of public interest — Whether publication was fair — Whether fair-minded person could honestly make such comment without having any basic facts to rely upon*

*Tort — Defamation — Defence — Qualified privilege — Publication of defamatory letter in newspaper during state by-election — Whether defendants could prove qualified privilege on balance of probabilities — Whether defendants had duty to publish letter — Whether publication was privileged as by-election generated public interest — Whether journalists, editors and newspapers in special positions which entitled them to defence of qualified privilege*

*Tort — Defamation — Malice — Meaning of — Inference of malice — Publication of defamatory letter in newspaper without prior verification — Whether editor was reckless and not concerned with truth or falsity of letter — Whether such malice on editor's part could be imputed to his employer*

*Tort — Defamation — Damages — Compensatory damages — Aggravated damages — Publication of defamatory letter in newspaper — Whether compensatory damages could include aggravated damages — Whether award of damages was fair and adequate to vindicate plaintiff and to console him for wrong done*

The plaintiff, the former Chief Minister and Governor of Sarawak, claimed damages and an injunction against the defendants for libel published in an article of a local daily newspaper ('the article'). The first defendant was the publisher of the newspaper while the second and the third defendants were the printer and the editor of the newspaper respectively. The article concerned a letter to the third defendant as the editor of the newspaper regarding a state constituency by-election where the plaintiff accompanied an independent candidate to the nomination centre on the nomination day. The defendants

contended that the words complained of in the article were not defamatory of the plaintiff. The defendants further argued that even if such words were defamatory of the plaintiff, they could rely on the defences of justification, fair comment and qualified privilege. To support the defence of justification, the defendants pleaded general and specific wrongdoings of the plaintiff. In respect of the defence of qualified privilege, the defendants claimed that they had a duty to the people of Sarawak to publish the article and the latter had a corresponding duty to receive such publication. The defendants further claimed that the by-election had generated public interest. The third defendant testified, *inter alia*, that before he published the article, he did not verify the contents of the article and the article was published in toto. A B C

**Held**, allowing the claim:

- (1) The test whether the words complained of in the article were capable of being, and were in fact, defamatory of the plaintiff was, whether such words were calculated to expose him to hatred, ridicule or contempt in the mind of a reasonable man or would tend to lower him in the estimation of right-thinking members of society generally. The words complained of in the article were capable of being, and were in fact, defamatory of the plaintiff (see pp 402H and 403C); *JB Jeyaretnam v Goh Chok Tong* [1985] 1 MLJ 334 and *Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Bhd & Anor* [1973] 2 MLJ 56 followed. D E
- (2) In respect of the defence of justification, the burden was on the defendants to establish the truth of the specific imputations against the plaintiff, considering s 8 the Defamation Act 1957. The defendants were not entitled to rely on general or specific charges of the plaintiff's wrongdoings which were not relevant to the specific imputations. The defendants had failed to establish the truth of the defamatory statements on the balance of probabilities (see p 406E); *Bookbinder v Tebbitt* [1989] 1 All ER 1169, *Templeton v Jones* [1984] 1 NZLR 448, *Plato Films Ltd & Ors v Speidel* [1961] AC 1090 and *Scott v Sampson* (1882) 8 QBD 491 followed. F G
- (3) Regarding the defence of fair comment, the words complained of were not capable of being comments. Alternatively, such words were not made on a matter of public interest because the mere presence of the plaintiff during nomination day was not a matter of public interest. Even if such words qualified to be comments, such words were not fair in the sense that a fair-minded person could not honestly make them without having any basic facts to rely upon. Accordingly, on the balance of probabilities the defence of fair comment failed (see pp 408H, 409E-G and 410G); *JB Jeyaretnam v Goh Chok Tong* [1985] 1 MLJ 334, *Lee Kuan Yew v JB Jeyaretnam* [1979] 1 MLJ 281, *Telnikoff v Matusevitch* [1991] 4 All ER 817 and *Abdul Rahman Talib v Seenivasagam & Anor* [1965] MLJ 142 followed; *Odger v Mortimer* (1873) 28 LT 472 distinguished. H I

- A (4) The defendants had not established that they owed a duty to the people of Sarawak to publish the article. Although the by-election had generated a lot of public interest, such an event did not *per se* evolve itself into a privileged one. Journalists, editors and newspapers did not have any special positions so as to entitle them to rely on the defence of qualified privilege on any matters which they may publish. The defence of qualified privilege therefore failed on the balance of probabilities (see p 411E-I); *Blackshaw v Lord* [1983] 2 All ER 311; *Adam v Ward* [1917] AC 309 and *Arnold v King Emperor* (1914) 30 TLR 462 followed.
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- C (5) In publishing the article, the third defendant took no precaution, was reckless and was not concerned with its truth or falsity thereby evidencing malice on his part. The existence of malice on the third defendant's part would be imputed to the first defendant who was his employer. But since it was not established by evidence that the third defendant was the employee or agent of the second defendant, the plaintiff had not established malice on the second defendant's part. Accordingly, in respect of the first and third defendants, their defences of fair comment and qualified privilege would have been defeated by the existence of malice (see pp 415D-I and 416A); *Guise v Kouvelis* (1946) 46 SR (NSW) 419 not followed.
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- E (6) In a libel action, the general rule is that damages are assessed on a compensatory basis. Compensatory damages may include aggravated damages if aggravating circumstances exist. In this case, having considered the aggravating factors, the sum of RM100,000 as compensatory damages should be fair and adequate to vindicate the plaintiff to the public and to console him for the wrong done. No order of apportionment was made since no application for separate assessment was made by the defendants (see pp 416F-I, 419E-F and 420A); *Uren v John Fairfax & Sons Pty Ltd* (1966) 117 CLR 118; *Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Bhd & Anor* [1973] 2 MLJ 56 and *Datuk Patinggi Abdul Rahman Ya'kub v Abang Mohammad bin Abang Anding* [1979] 2 MLJ 185 followed.
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### [Bahasa Malaysia summary]

- H Plaintiff, bekas Ketua Menteri dan Gabenor Sarawak, telah menuntut ganti rugi dan suatu injunksi terhadap defendan-defendan untuk libel yang disiarkan dalam suatu artikel suratkhbar harian tempatan ('artikel tersebut'). Defendan pertama merupakan penyiar suratkhbar tersebut manakala defendan-defendan kedua dan ketiga adalah masing-masing pencetak dan penyunting suratkhbar tersebut. Artikel tersebut adalah mengenai sepucuk surat kepada defendan ketiga selaku penyunting suratkhbar tersebut, dan ia adalah berkenaan dengan suatu pilihanraya kecil kawasan pilihanraya negeri di mana plaintiff mengiringi seorang calon bebas ke pusat pencalonan pada hari pencalonan. Defendan-defendan berhujah bahawa perkataan-
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perkataan yang didakwa dalam artikel tersebut tidak memfitnahkan plaintif. Defendan-defendan seterusnya berhujah bahawa sekalipun perkataan-perkataan sedemikian memfitnahkan plaintif, mereka boleh bergantung kepada pembelaan justifikasi, komen berpatutan dan perlindungan bersyarat. Untuk menyokong pembelaan justifikasi, defendan-defendan menyatakan dalam plidingnya tentang perbuatan salah am dan khusus yang dilakukan oleh plaintif. Berkenaan dengan pembelaan perlindungan bersyarat, defendan-defendan menuntut bahawa mereka mempunyai kewajiban terhadap rakyat Sarawak untuk menyiarkan artikel tersebut dan rakyat Sarawak juga mempunyai kewajiban yang sama untuk menerima penyiaran tersebut. Defendan-defendan seterusnya menuntut bahawa pilihanraya kecil tersebut telah menimbulkan kepentingan awam. Defendan ketiga telah memberi keterangan, antara lain, bahawa dia tidak menentusahkan isi kandungan artikel tersebut sebelum menyiarkannya dan artikel tersebut telah disiarkan secara keseluruhannya.

**Diputuskan,** membenarkan tuntutan itu:

- (1) Ujian sama ada perkataan-perkataan yang diadu dalam artikel tersebut adalah berkeupayaan untuk memfitnah dan sebenarnya telah memfitnah plaintif, adalah sama ada perkataan-perkataan tersebut adalah diperhitungkan untuk mengakibatkan plaintif dibenci, dipersenda atau dihina dalam minda seorang yang munasabah atau sama ada perkataan-perkataan tersebut berkecenderungan untuk merendahkan plaintif dalam pandangan ahli-ahli masyarakat yang berfikiran waras secara amnya. Perkataan-perkataan yang diadu dalam artikel tersebut adalah berkeupayaan untuk memfitnah dan sebenarnya telah memfitnah plaintif (lihat ms 402H dan 403C); *JB Jeyaretnam v Goh Chok Tong* [1985] 1 MLJ 334 dan *Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Bhd & Anor* [1973] 2 MLJ 56 diikuti.
- (2) Berkenaan dengan pembelaan justifikasi, beban adalah atas defendan-defendan untuk membuktikan kebenaran tohmahan khusus terhadap plaintif dengan berpandu kepada s 8 Akta Fitnah 1957. Defendan-defendan tidak berhak untuk bergantung kepada pertuduhan am atau khusus berkenaan dengan perbuatan salah plaintif yang tidak relevan kepada tohmahan khusus yang memfitnah plaintif dalam kes ini. Defendan-defendan telah gagal membuktikan kebenaran kenyataan yang memfitnah plaintif atas imbalan kebarangkalian (lihat ms 406E); *Bookbinder v Tebbitt* [1989] 1 All ER 1169, *Templeton v Jones* [1984] 1 NZLR 448, *Plato Films Ltd & Ors v Speidel* [1961] AC 1090 dan *Scott v Sampson* (1882) 8 QBD 491 diikuti.
- (3) Berkaitan dengan pembelaan komen berpatutan, perkataan-perkataan yang diadu itu tidak merupakan komen. Secara alternatif, perkataan-perkataan tersebut adalah tidak dibuat atas

- A perkara yang berkepentingan awam kerana kehadiran plaintiff pada hari pencalonan semata-mata tidak merupakan perkara yang berkepentingan awam. Jikapun perkataan-perkataan tersebut layak menjadi komen, perkataan-perkataan tersebut adalah tidak berpatutan, dari segi bahawa seseorang yang bersikap adil tidak akan membuatnya secara jujur tanpa berdasarkan apa-apa fakta
- B asas. Oleh yang demikian, pembelaan komen berpatutan gagal atas imbalan kebarangkalian (lihat ms 408H, 409E-G dan 410G); *JB Jeyaretnam v Goh Chok Tong* [1985] 1 MLJ 334, *Lee Kuan Yew v JB Jeyaretnam* [1979] 1 MLJ 281, *Telnikoff v Matusevitch* [1991] 4 All ER 817 dan *Abdul Rahman Talib v Seenivasagam & Anor* [1965] MLJ 142 diikuti. *Odger v Mortimer* (1873) 28 LT 472 dibezakan.
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- (4) Defendan-defendan tidak dapat membuktikan bahawa mereka mempunyai kewajipan untuk menyiarkan artikel tersebut kepada rakyat Sarawak. Walaupun pilihanraya kecil tersebut telah menimbulkan banyak kepentingan awam, tetapi peristiwa yang
- D sedemikian, dengan sendirinya, tidak menjadikannya sesuatu yang terlindung. Wartawan, penyunting dan suratkhbar tidak mempunyai kedudukan yang istimewa yang membolehkan mereka bergantung kepada perlindungan bersyarat atas perkara-perkara yang disiarkan oleh mereka. Justeru itu, pembelaan perlindungan bersyarat gagal atas imbalan kebarangkalian (lihat ms 411E-I); *Blackshaw v Lord* [1983] 2 All ER 311, *Adam v Ward* [1917] AC 309 dan *Arnold v King Emperor* (1914) 30 TLR 462 diikuti.
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- (5) Apabila menyiarkan artikel tersebut, defendan ketiga tidak mengambil apa-apa tindakan berjaga-jaga, bersikap tidak peduli dan tidak prihatin tentang kebenaran atau kepalsuan artikel tersebut. Kesemua ini membuktikan niat jahatnya. Niat jahat defendan ketiga boleh dikaitkan dengan defendan pertama yang merupakan majikannya. Tetapi, oleh kerana tidak terdapat keterangan bahawa defendan ketiga adalah pekerja atau ejen defendan kedua, plaintiff telah gagal membuktikan niat jahat defendan kedua. Oleh yang demikian, pembelaan-pembelaan komen berpatutan dan perlindungan bersyarat bagi defendan-defendan pertama dan ketiga akan gagal kerana kewujudan niat jahat (lihat ms 415D-I dan 416A); *Gutse v Kowvelis* (1946) 46 SR (NSW) 419 tidak diikuti.
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- (6) Dalam tindakan libel, atas peraturan am, ganti rugi adalah ditaksirkan atas dasar pampasan. Ganti rugi bersifat pampasan boleh termasuk ganti rugi teruk (aggravated damages) sekiranya keadaan yang teruk wujud. Dalam kes ini, selepas mempertimbangkan faktor-faktor yang teruk, jumlah RM100,000 sebagai ganti rugi bersifat pampasan adalah dianggap adil dan memadai untuk memulihkan nama baik plaintiff dalam masyarakat di samping memberi pampasan kepada beliau akibat kesalahan
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yang dilakukan terhadap beliau. Perintah pengagihan tidak dibuat oleh kerana tidak terdapat permohonan untuk taksiran berasingan oleh defendan-defendan (lihat ms 416F-I, 419E-F dan 420A); *Uren v John Fairfax & Sons Pty Ltd* (1966) 117 CLR 118, *Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Bhd & Anor* [1973] 2 MLJ 56 dan *Datuk Patinggi Abdul Rahman Ya'kub v Abang Mohammad bin Abang Anding* [1979] 2 MLJ 185 diikut.]

## Notes

- For cases on libel, see 12 *Mallal's Digest* (4th Ed) paras 89-96; [1989] *Mallal's Digest* 1493; [1991] *Mallal's Digest* 1946; [1992] *Mallal's Digest* 1644-1647; [1993] *Mallal's Digest* 1272-1275; [1994] *Mallal's Digest* 2112.
- For cases on libel in newspapers, see 12 *Mallal's Digest* (4th Ed) paras 99-101.
- For cases on justification, see 12 *Mallal's Digest* (4th Ed) para 101; [1993] *Mallal's Digest* 1275; [1994] *Mallal's Digest* 2111.
- For cases on fair comment, see 12 *Mallal's Digest* (4th Ed) para 84; [1990] *Mallal's Digest* 1173; [1991] *Mallal's Digest* 1943; [1992] *Mallal's Digest* 1645; [1994] *Mallal's Digest* 2110.
- For cases on qualified privilege, see [1989] *Mallal's Digest* 1493; [1990] *Mallal's Digest* 1175; [1991] *Mallal's Digest* 1948; [1992] *Mallal's Digest* 1646; [1994] *Mallal's Digest* 2115.
- For cases on malice, see 12 *Mallal's Digest* (4th Ed) para 112; [1990] *Mallal's Digest* 1174.
- For cases on damages, see 12 *Mallal's Digest* (4th Ed) paras 124-125; [1990] *Mallal's Digest* 1176; [1993] *Mallal's Digest* 1275.

## Cases referred to

- Abdul Rahman Talib v Seenivasagam & Anor* [1965] MLJ 142
- Abdul Rahman Talib v Seenivasagam & Anor* [1966] 2 MLJ 66
- Adam v Ward* [1917] AC 309
- AJA Peter v OG Nio & Ors* [1980] 1 MLJ 226
- Arnold v The King Emperor* (1914) 30 TLR 462
- Blackshaw v Lord* [1983] 2 All ER 311
- Bookbinder v Tebbitt* [1989] 1 All ER 1169
- Capital & Counties Bank v Henty* (1882) 7 App Cas 741
- Cassell & Co Ltd v Broome* [1972] 1 All ER 801
- Datuk Harris bin Mohamed Salleh v Abdul Jalil bin Ahmad & Anor* [1984] 1 MLJ 97
- Datuk Patinggi Abdul Rahman Ya'kub v Abang Mohammad bin Abang Anding* [1979] 2 MLJ 185
- Grubb v Bristol United Press Ltd* [1963] 1 QB 309
- Guisse v Kouvelis* (1946) 46 SR (NSW) 419
- Horrocks v Lowe* [1975] AC 135

- A *Institute of Commercial Management United Kingdom v New Straits Times Press (Malaysia) Bhd* [1993] 1 MLJ 408  
*JB Jeyaretnam v Goh Chok Tong* [1985] 1 MLJ 334  
*Jones v Skelton* [1963] 3 All ER 952  
*Kemsley v Foot* [1952] 1 All ER 501  
*Lee Kuan Yew v JB Jeyaretnam* [1979] 1 MLJ 281
- B *Maidstone Pte Ltd v Takenaka Corp* [1992] 1 SLR 772  
*Odger v Mortimer* (1873) 28 LT 472  
*Plato Films Ltd & Ors v Speidel* [1961] AC 1090  
*Rajagopal v Rajan* [1972] 1 MLJ 45  
*Scott v Sampson* [1882] 8 QBD 491
- C *S Pakianathan v Jenni Ibrahim* [1988] 2 MLJ 173  
*Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Bhd & Anor* [1973] 2 MLJ 56  
*Telnikoff v Matusevitch* [1991] 4 All ER 817  
*Templeton v Jones* [1984] 1 NZLR 448  
*Uren v John Fairfax & Sons Pty Ltd* (1966) 117 CLR 118
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#### Legislation referred to

Defamation Act 1957 s 8

Rules of the High Court 1980 0 78 r 3(2)

- E *Chong Siew Chiang (Cheng Hui Hong with him) (Cheng & Cheng Adv)* for the plaintiff.  
*Sim Hui Cheng (Leonard Shim with him) (Reddi & Co)* for the defendants.

*Cur Adv Vult*

- F **Richard Malanjum J:** This is a claim by the plaintiff against the defendants for damages, as well as for injunction and costs for libel contained in an article ('Ex PIA') appearing under the heading of 'Why stoop so low to scoop so little' published in the 22 June 1986 Ed of the 'People's Mirror', a local daily newspaper (hereinafter referred to as 'the People's Mirror').
- G The plaintiff is the former Tuan Yang Terutama Yang Di-Pertua Negeri of Sarawak, from 1981 to 1 April 1985. And from 7 July 1970 to March 1981, he was the Chief Minister of Sarawak. Prior to attaining those positions, the plaintiff held various jobs and positions, ranging from being a magistrate and a deputy public prosecutor to Federal Education Minister of Malaysia.
- H In his testimony, the plaintiff stated that he was also a member of the Supreme Council of the World Muslim League and a member of the Central Executive Committee of the World Muslim Congress. In recognition for his services, the plaintiff has been bestowed with several awards in Malaysia and has also been awarded with several foreign decorations. He is also a member of the Lincoln's Inn, London where he read law.
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At the material time, the first defendant was the publisher of the People's Mirror, while the second defendant and the third defendants were the printer and the editor respectively of the said newspaper.

For convenience, it is reproduced hereto the said article ('Ex PIA') which the plaintiff claims to be libellous of him. I have numbered the paragraphs to facilitate reference later on.

Why stoop so low to scoop so little

Dear Editor,

- (1) The nomination day for Oya, N32 on 17 June was a very colourful and memorable one.
- (2) I was there and it was indeed a rich experience.
- (3) I have never seen commitment to the Barisan Nasional by the people of Batang Oya as open as it was demonstrated on 17 June 1986.
- (4) It was indeed a sad day for Tun Rahman to be openly seen supporting and leading a group which is bent on trying to destroy the unity of the people of Batang Oya.
- (5) The people have rightly given him an appropriate reception by totally ignoring his presence there.
- (6) This must have been a big blow to his ego and indeed a great humiliation to the man who was once held in high respect when he was the Chief Minister and the head of state.
- (7) How could he stoop so low?
- (8) What is the basis for accusing the Barisan Nasional and Datuk Patinggi Taib of splitting the people and creating hatred and bitterness between the Melanaus of Batang Oya?
- (9) Doesn't he realize that it was Datuk Hj Salleh and his cronies supported by Tun himself, who started the circus which later turned into a serious political confrontation?
- (10) Today, this very group of people is turning the people of Batang Oya into political tools for the sole purpose of gaining power.
- (11) Their sole and ultimate purpose is to gain power because only through the exercise of power one can control the riches and resources of Sarawak.
- (12) As a voter in Oya N32, I publicly declare that I will vote for the Barisan Nasional because it would be totally useless to vote for the independent candidate who has no means to deliver the goods.
- (13) I hope and urge other voters in the Oya constituency to reject Datuk Hj Salleh so that the issue will be settled once and for all.

A Voter of Oya N32

The full text of the said article ('Ex PIA') as reproduced hereinabove shall, for convenience, hereinafter be referred to as either 'the words complained of' or 'Ex PIA' as and where appropriate.

At this juncture, I will deal first with the events leading to the publication of Ex PIA.

A 17 June 1986 was the nomination day for the by-election in the Oya constituency following the resignation of its then assemblyman, Datuk Salleh Jaffaruddin. Two candidates stood for the by-election, namely, Wan Madzih Wan Mahdzar for the Barisan Nasional and Datuk Salleh Jaffaruddin as an independent. It was not in dispute that, on the eve of the nomination day, the plaintiff came to Oya and stayed there for one night upon the request of Datuk Salleh Jaffaruddin. Further, it was also a fact that the next day, that is, the nomination day, the plaintiff accompanied the independent candidate to the nomination centre. However, he returned to Kuching on the same day via Mukah and Sibul, and did not wait until the nomination was over.

C After the nomination, it was followed by heavy campaigning for both the candidates. The voting took place on 1 and 2 July 1986. In the evening of 2 July 1986, the result of the by-election was announced whereby the Barisan Nasional candidate won.

D It is to be noted that Ex PIA was published within the campaigning period of the by-election for the state constituency of Oya.

The plaintiff claims that the words complained of in their natural and ordinary meaning meant, and were understood to mean:

- (1) that he (the plaintiff) was 'seeking to destroy the unity of and create hatred and bitterness amongst the people of Batang Oya';
- E (2) that he (the plaintiff) was 'using the people of Batang Oya as political tools for the purpose of gaining power for himself'; and
- (3) that his (the plaintiff's) 'sole and ultimate' purpose in acting as such was 'to gain control of the riches and resources of Sarawak for himself'.

F The plaintiff further alleges that, as a result of the publication of the words complained of, his reputation has been injured and that he has been brought into public scandal, odium and contempt.

G All the defendants in their joint defence denied that the words complained of, in their natural or ordinary meaning, were defamatory of the plaintiff. Further, the defendants adopted the following defences, namely:

- (i) that if the words complained of were defamatory in the way as claimed by the plaintiff, then they are true in substance and in fact (a defence of justification);
- (ii) further and/or in the alternative, the words complained of, if they were defamatory, were fair comments upon a matter of public interest; and
- H (iii) in the further alternative the words complained of, if defamatory, were published on an occasion of qualified privilege and without malice.

I Thus, in determining on the question of liability, there are four issues which I must address to in my mind. And the first issue to be considered is:

- (a) whether the words complained of, in their natural and ordinary meaning, bear the meaning ascribed to by the plaintiff and are defamatory of him.

If my finding is in the negative, then that will be the end of the matter. Otherwise, the defences as pleaded have to be considered, namely:

- (b) whether the defence of justification prevails;
- (c) further and/or alternatively, whether the defence of fair comment upon a matter of public interest can succeed;
- (d) alternatively, whether the defence of qualified privilege is available to the defendants; and
- (e) whether the defendants were actuated by malice when, and in, publishing the words complained of.

Incidentally, there is no doubt that the words complained of made reference to the plaintiff since his name was specifically mentioned, and the defendants did not raise any dispute.

#### *A(i) Issue (a)*

Although the words complained of as a whole are relevant, the specific portions which referred to the plaintiff are from paras 4 to 11.

On issue (a), it is one of construction of the words complained of and at the same time to determine if they were capable of and in fact defamatory of the plaintiff. The approach in the construction of the words complained of is to consider the meaning such words would convey to ordinary reasonable persons using their general knowledge and common sense; it is not confined to strict literal meaning of the words but extends to any reference or implication from which persons can reasonably draw (see *Jones v Skelton* [1963] 3 All ER 952; *Kemsley v Foot* [1952] 1 All ER 501; *Rajagopal v Rajan* [1972] 1 MLJ 45). It is irrelevant what the publisher intended the words complained of to mean (see *Capital & Counties Bank v Henty* (1882) 7 App Cas 741; *Grubb v Bristol United Press Ltd* [1963] 1 QB 309; *AJA Peter v OG Nio & Ors* [1980] 1 MLJ 226). It is also irrelevant what the readers understood the words complained of to mean for the purpose of deciding their ordinary and natural meaning. (See *JB Jeyaretnam v Goh Chok Tong* [1985] 1 MLJ 334). There is also no necessity for a plaintiff to prove falsity of the words complained of once they are found to be defamatory of him (see *Abdul Rahman Talib v Seenivasagam & Anor* [1965] MLJ 142).

As to whether the words complained of in this case were capable of being, and were, in fact, defamatory of the plaintiff, the test to be considered is whether the words complained of were calculated to expose him to hatred, ridicule or contempt in the mind of a reasonable man or would tend to lower the plaintiff in the estimation of right-thinking members of society generally (see *JB Jeyaretnam*). Mohamed Azmi J (as he then was) in *Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Bhd & Anor* [1973] 2 MLJ 56 at p 58 said:

Thus, the test of defamatory nature of a statement is its tendency to excite against the plaintiff the adverse opinion of others, although no one believes

A the statement to be true. Another test is: would the words tend to lower the plaintiff in the estimation of right-thinking members of society generally? The typical type of defamation is an attack upon the moral character of the plaintiff attributing crime, dishonesty, untruthfulness, ingratitude or cruelty.

B Words could still be defamatory even if they did not really lower a plaintiff in the estimation of those to whom they were published. The law looks only to its tendency (see *JB Jeyaretnam v Goh Chok Tong, Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Bhd & Anor*).

C In the instant case, I have read the words complained of, in particular those paragraphs which specifically made reference to the plaintiff and applying the principle of law as discussed above. It is my finding in law that the words complained of were capable of being defamatory, and were in fact, defamatory of the plaintiff and of him in the way that was ascribed by him in para 4 of the statement of claim. The sting lay in the allegations and implications that the plaintiff acted in a way to divide the people of Batang Oya and using them as his political vehicle to gain power so that he could control the wealth of Sarawak for himself. To put it briefly, the words complained of alleged and implied that the plaintiff was unscrupulous, dishonourable, ruthless, selfish and greedy for power and wealth. With such allegations or implications, no reasonable man would have found the words complained of to be anything else other than being defamatory of the plaintiff.

E Learned counsel for the defendants contended that the words complained of are not defamatory of the plaintiff. And he came to such a proposition after going through some of the passages therein. It was submitted that a distinction should be made between the plaintiff and the group which he was supporting and leading on that particular day. And learned counsel went on to say that the author of Ex PIA did not say that it was the plaintiff who was seeking to destroy the unity of the people. Similar exercise was also carried out by the learned counsel on the other passages of Ex PIA, and came to the conclusion that the words complained of were not defamatory of the plaintiff.

G With respect, I must say that in doing what the learned counsel did, he failed to apply the correct test as discussed earlier on in this judgment in construing the words complained of. It is not confined to strict literal meanings of the words complained of, but extends to any reference or implication from which persons can reasonably draw. Further, the words complained of must be considered as a whole, bearing in mind, inter alia, the context in which they were used (see *Gatley on Libel and Slander* (8th Ed) para 102 at p 102 and *Institute of Commercial Management United Kingdom v New Straits Times Press (Malaysia) Bhd* [1993] 1 MLJ 408). In the case of *Capital and Counties Bank v Henty* (1882) 7 App Cas 741, at p 745 Lord Selborne LC said this:

I The test according to the authorities is whether, under the circumstances in which the writing was published, a reasonable man to whom the publication was made would be likely to understand it in a libellous sense.

Accordingly, I reject the contention of the learned counsel for the defendants and it follows that this defence of the defendants as pleaded in para 4 of the reamended defence fails.

I now turn to the other defences pleaded by the defendants and summarized earlier on in this judgment as issues (b), (c) and (d).

(ii) *Issue (b)*

In a defamation action, the defence of justification is a complete defence if it succeeds. And the question of malice or bad faith does not arise. But in order to succeed in the defence of justification a defendant must establish the truth of all the material statements in the words complained of which may include defamatory comments made therein. And in order to justify such comments, it is necessary to show that the comments are the correct imputations or conclusions to be drawn from the proved facts. However, the plea of justification does not fail 'by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges' (see s 8 of the Defamation Act 1957 and *Abdul Rahman Talib v Seenivasagam & Anor* [1966] 2 MLJ 66). It is also to be noted that partial justification may be useful in the mitigation of damages.

Of course, the standard of proof required is on the balance of probabilities, and the burden of establishing the defence of justification is on a defendant.

There is no burden on a plaintiff to prove that a defamatory statement is false. The law presumes that the defamatory words are false.

In the present case, the plaintiff contends that the words complained of convey the meanings or imputations as pleaded in para 4 of his statement of claim, and as summarized earlier on in this judgment.

In pleading the defence of justification the defendants stated in para 5 of the reamended defence as follows and I quote in toto:

The defendants contend that if (which is denied), the words complained of are defamatory of the plaintiff; the same in their natural and ordinary meaning as pleaded in para 4 of the statement of claim are true in substance and in fact.

Particulars pursuant to O 78 r 3(2) of the Rules of the High Court 1980:

- (a) The plaintiff had lent his active support to those former members of Parti Persaka Bumiputra Bersatu ('PBB') in their bid to form and register a political party known as United Sarawak Natives Association ('USNA'), which subsequently was registered as PERMAS, whose aim was to challenge the leadership of the present Chief Minister of Sarawak, his State Government and the PBB;
- (b) In the Oya State by-election in June-July 1986, the candidates were Madzihi Mahdzar and Datuk Salleh Jaffaruddin, both related to the plaintiff, both of whom and the plaintiff have strong family connections in the areas comprising the State constituency of Oya and both of whom and the plaintiff have strong ties with or are closely identified

- A with the local communities in the said constituency. The plaintiff's participation in the by-election (more particularly by delivering a speech at a surau on the day before the nomination and by accompanying Datuk Salleh Jaffaruddin to the nomination centre) was to boost, or an attempt by the plaintiff to boost, the political fortune or chances of the said Datuk Salleh Jaffaruddin in the said by-election, thereby creating and did create bitterness and disunity amongst the communities with whom the plaintiff and the said candidates had close association or connections and the loyalty of the local communities was hence deeply divided.
- B
- C (c) The by-election was, in effect and reality, a proxy battle between the plaintiff (who supported Datuk Salleh Jaffaruddin) and the Chief Minister of Sarawak, Datuk Patinggi Haji Abdul Taib bin Mahmud (a nephew of the plaintiff who also had been closely identified with or has strong connections with the local communities in the said constituency) who is supporting the candidate nominated by PBB, Wan Madzihi bin Mahdzar, and by declaring his open support to the opposition/independent candidate, the plaintiff in fact made the by-election campaign more intensive and bitter; and consequently, this resulted in a severe division in the unity and loyalty of the local community in the constituency.
- D
- E (d) The by-election was generally considered to be a barometer of the relative political strength of the plaintiff and the Chief Minister. Had the candidate nominated by PBB lost, the way would be paved for the plaintiff, who supported the opposition/independent candidate, to regain political power.
- F (e) The plaintiff in various statements published in the press did not rule out the possibility of his returning to active politics; and examples of Tun Mustapha and Tun Fuad of Sabah who after holding the office of Yang Di Pertua Negeri later became Chief Minister of Sabah, had been cited.
- (f) Whilst holding the position of Chief Minister and/or Minister for Forestry, timber licences were issued with the approval of the plaintiff to the following companies in which his friends and/or close relatives had interests, viz:

G

| <i>Name of Companies</i>        | <i>Name of Shareholders<br/>Involved</i>                                         |
|---------------------------------|----------------------------------------------------------------------------------|
| 1 Lawas Lumber Sdn Bhd          | Yassin Mohd Noor, also spelt<br>Yassin b Matnoor<br>(plaintiff's brother-in-law) |
| 2 Lebaw Sdn Bhd                 | Fatimah Ya'akub<br>(plaintiff's cousin)                                          |
| 3 Salmas Woodworking<br>Sdn Bhd | Datuk Salleh Jaffaruddin<br>(plaintiff's cousin)                                 |
| 4 Timplex (Sarawak)<br>Sdn Bhd  | Jamil Ho Abdullah<br>(plaintiff's brother-in-law)                                |

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- |   |                        |                                                                     |   |
|---|------------------------|---------------------------------------------------------------------|---|
| 5 | Delapan Sdn Bhd        | Norlia bte Abdul Rahman<br>(daughter of plaintiff)                  | A |
| 6 | Lembahan Mewah Sdn Bhd | Norlia bte Abdul Rahman<br>(daughter of plaintiff)                  |   |
| 7 | Baltim Timber Sdn Bhd  | Wan Habib Syed Mahmud<br>(political ally of the plaintiff)          | B |
| 8 | Sadan Timber Sdn Bhd   | Datuk Salleh Jaffaruddin<br>(plaintiff's cousin and political ally) |   |

(further particulars of other companies in which the plaintiff's friends and relatives had interest and which were issued with forest timber licences as aforesaid can be given if so required by the plaintiff). C

- (g) Further and/or alternatively, the defendants will rely upon s 8 of the Defamation Ordinance 1952 (sic) of Malaysia.

Having read the pleadings of the plaintiff, in particular para 4 of the statement of claim, it is my finding that the plaintiff relied on imputations couched in specific terms or specific charges of wrongdoing that could be concluded from the words complained of. And I noted that the defendants did not suggest any alternative imputations that could arise from Ex PIA. Accordingly, it is the law that in such a situation the defendants are not entitled to rely on general charges of wrongdoings or of any specific instance of wrongdoing which are not relevant or linked to the specific charges. The burden is, therefore, on the defendants to establish the truth of those specific charges or imputations relied upon by the plaintiff bearing in mind, of course, in this country s 8 of the Defamation Act 1957 (see *Bookbinder v Tebbitt* [1989] 1 All ER 1169; *Templeton v Jones* [1984] 1 NZLR 448; *Plato Films Ltd & Ors v Speidel* [1961] AC 1090; *Scott v Sampson* [1882] 8 QBD 491). D E F

It follows in this case that, general charges or general conclusions or irrelevant specific instances of wrongdoing as submitted are therefore removed from consideration in finding whether the defendants have succeeded in establishing the defence of justification. Further, as stated earlier on in this judgment, the defendants must establish not only the truth of the defamatory facts alleged, but also that the basic facts and the inferences arising therefrom are both true. G

With the foregoing principles of law in mind, I have therefore examined whether the particulars given in the reamended defence can be the basis to justify the specific defamatory charges, meanings or imputations relied upon by the plaintiff and not disputed by the defendants. And it is my finding that particulars (a), (e) and (f) of para 5 of the reamended defence are irrelevant to the specific charges relied upon. As such, I do not think these particulars are of any help to the defendants in their quest of establishing the defence of justification. In any event, I am also not satisfied that the defendants have adduced any or sufficient evidence to I

- A establish that these particulars are facts and the truth. For instance, Ex D33 and Ex D34 did not show that the plaintiff was involved in the formation of an intended political party known as USNA. As for particular (e), it involves a general statement and is speculative in nature and irrelevant to the specific charges, meanings or imputations relied upon by the plaintiff. For particular (f), it was not rebutted by the defendants
- B that at the material times the plaintiff was not in the position to act as alleged since he had delegated his powers to his deputy. There was also nothing to show that the plaintiff had a role in the approval and issuance of the forest licences. No doubt it was not in dispute that the signature of the plaintiff appeared in the licence issued to Salmas Woodworking Sdn
- C Bhd on 1 May 1976. But it was not rebutted that, at that time, Datuk Salleh Jaffaruddin was not a shareholder, and that the plaintiff did not know the shareholders at the time he signed on the licence.

Accordingly, particulars (a), (e) and (f) of para 5 of the reamended defence fail to serve any useful purpose for the plea of justification.

- D As for particulars (b) and (c) of para 5 of the reamended defence, I find on the balance of probabilities the allegations made therein to be without any basis. No evidence was adduced that the plaintiff had strong ties with the local communities of the Oya constituency, or that the by-election was a proxy battle between the plaintiff and Datuk Patinggi Haji Abdul Taib Mahmud, the Chief Minister of Sarawak. It was also left
- E without any evidence adduced that the plaintiff gave a speech at a surau on the eve of the nomination day. With regard to the presence of the plaintiff during the nomination day together with Datuk Jaffaruddin, the defendants averred that it created bitterness and disunity amongst the communities. But no one testified that the situation during the nomination day was
- F tense. DW3 Encik Mohd Gazali Kipli did say that the crowd was disorderly, but he clarified by saying that they were only noisy. With thousands of people present, that should be expected. If indeed the presence of the plaintiff during the nomination day created bitterness and disunity, the situation in the constituency during the campaign period would have also
- G been tense. But it was the witnesses of the defendants who testified that a concert was even held during the campaigning period. The returning officer of that by-election — DW6 Encik Sulaiman Hussaini, could not recall of anyone being arrested or of any complaint made to him during the campaigning period.
- H Indeed, DW6 confirmed that things went smoothly during the by-election save for two threatening letters and a telephone call which he claimed to have received. But, other than his own statement pertaining to the letters, no attempt was made to produce them or to call the relevant authority to whom the letters were allegedly given.
- I It is, therefore, my finding on the balance of probabilities that the defendants fell short of establishing any of their allegations in particulars (b) and (c) of para 5 of their reamended defence.

Similarly, it is also my finding that particular (d) of para 5 of the reamended defence is purely a conjecture. None of the defendants' witnesses could say as a fact that the by-election was a test of political strength between the plaintiff and the Chief Minister.

As it is my finding on the balance of probabilities that the defendants failed to establish the truth of the material statements in the words complained of, or any of the averments in the particulars given and intended to support the plea of justification, their defence of justification therefore fails.

(iii) *Issue (c)*

For the defence of fair comment, in order to succeed the following basic elements must be established by the defendants, namely:

- (i) that the words complained of are comments, though they may consist of or include inference of facts;
- (ii) that the comments are on a matter of public interest; and
- (iii) that the comments are based on facts, truly stated. They must also be fair and which a fair-minded person can honestly make on the facts proved (see *JB Jeyaretnam*).

On element (i), it is settled law that a comment is a statement of opinion on facts truly stated. A libellous statement of fact is not a comment or criticism on anything (see *Lee Kuan Yew v JB Jeyaretnam* [1979] 1 MLJ 281). In order to decide whether a statement is capable of being a comment or a statement of fact, should be gathered from the document wherein the words complained of are found. There is no necessity to look at other documents, though relevant, to come to such determination (see *Telnikoff v Matusевич* [1991] 4 All ER 817).

It has also been stated in our court in the case of *Abdul Rahman Talib v Seenivasagam & Anor* [1965] MLJ 142, and which I have no reason to differ, that a person cannot avail himself of any fact as justifying his comment of which he was ignorant at the time when he published the words complained of. It is the state of mind of a defendant when he published the defamatory words that is most material.

In the present case, therefore, I need only to look at Ex PIA in determining whether or not the words complained of are capable of being comments or statements of fact, and whether or not they are in fact either one.

Having read and reread Ex PIA, I am unable to find that the words therein complained of are capable of being comments. I am of the view that Ex PIA contains assertions of facts defamatory of the plaintiff and nothing has been shown by the defendants to the contrary. Furthermore, the words complained of are not based on facts nor is there any sufficient substratum of facts stated or inferred therein so as to enable readers to distinguish between the facts and the comments.

A No doubt the author of the words complained of was also expressing his personal experience on the nomination day. But when it came to referring to the plaintiff he expressed his view based on assertions of facts which I find no or no sufficient credible evidence adduced to establish their truth.

B For instance, I am not satisfied on the balance of probabilities that the defendants have shown that the group which the plaintiff came along with that day was in fact bent on destroying the unity of the people of Batang Oya. At best, it was a pure conjecture or inference without any factual basis being proved.

C Neither was it established that the plaintiff was in fact totally ignored by the people present on that day. If that were true then one would wonder what happened to the group that came with the plaintiff. And it was not disputed that on that day the independent candidate also had his supporters.

D Further, in my view it cannot be said that it was only the presence of the plaintiff during the nomination day as a fact that was commented upon. The reason is that a portion of the statements made on the plaintiff either had no bearing to the presence of the plaintiff or that they were based on other assertions of facts (see paras 9, 10, and 11 of Ex PIA).

Accordingly, on this first element itself the defence of fair comment fails.

E In the event that I am wrong and that Ex PIA contains comments, I also find that they were not made on a matter of public interest. I am not convinced that the mere presence of the plaintiff during the nomination day is a matter of public interest. Aside from being there, nothing was established on the conduct of the plaintiff that day which could be said to be of public interest deserving to be commented upon.

F Finally, on the third element, I also find the words complained of to be not fair even if they qualified to be comments. The bare assertions that the plaintiff was associated with a group bent on destroying the unity of the people of Batang Oya, and that there was greed for power and wealth, could hardly be fair when viewed objectively since the basic facts had not been established to be true in the first place. I do not think that a fair-minded person can honestly make such statements or comments without having any further basic facts to rely upon.

G Learned counsel for the defendants has contended that this case is not dissimilar to that of *Odger v Mortimer* (1873) 28 LT 472. I have read and reread that case, and with respect I cannot agree to that contention. In the first place, that case was first heard before a judge and a jury and a general verdict for the defendant was returned. It is not clear whether the trial court accepted all the defences pleaded by the defendant or that the defendant succeeded on the plea of fair comment. Thus, for the learned counsel for the defendants in this instant case to rely on that case to substantiate his argument on the plea of fair comment is therefore, in my view, overpresumptuous.

Secondly, the facts as given in that case could not be said to be similar to the present case. In *Odger's* case, the plaintiff admitted his conduct at public meetings and gave public speeches to push a cause which he believed in. In the instant case the only action the plaintiff did was to accompany a candidate to the nomination centre on the nomination day for the Oya constituency by-election. And that he did not even stay until the nomination was over. He gave no speech nor conducted himself so as to invite public comment (see *Gatley on Libel and Slander* (8th Ed) para 746). After all, the plaintiff, having stepped down as the Chief Minister and the head of state for Sarawak, should no longer be considered a public man. It would be unfair to rule that the previous positions of the plaintiff would make him a public man for the rest of his life. And it will also be against common sense and reason to say that anyone who participates in an election process is a public man, and therefore can be subject to comment for such participation.

Thirdly, in *Odger's* case the question posed to the jury was whether the alleged libel was really a malignant attack on the plaintiff's private character, or that it was a holding up of his principles to derision. The verdict of the jury obviously answered the alternative question in the affirmative. But in the present case, Ex PIA did not so much attack or comment on the presence of the plaintiff during the nomination day. Rather, it went on to assert expressly or which could be imputed or inferred that the plaintiff and his group were: (i) out to disunite the people of Batang Oya; (ii) using the people of Batang Oya as political tools to gain power; and (iii) acting as such with the ultimate purpose of gaining control of the wealth of Sarawak.

In short, the attack on the plaintiff in particular was that he was greedy for power and wealth, and was prepared to disunite the people of Batang Oya by creating hatred and bitterness just to achieve such a purpose. Are such imputations fair and relevant to the fact that the plaintiff only followed a candidate to the nomination centre? I do not think so. I find such allegations, statements or imputations to be more of an attack on the private character of the plaintiff whilst not being a public man.

For the above reasons, it is therefore my finding on the balance of probabilities that the defence of fair comment fails.

(iv) *Issue (d)*

As a further alternative, the defendants pleaded the defence of qualified privilege without any particulars given (see para 7 of the reamended defence). It was the contention of the defendants that Ex PIA was published without malice and on occasion of qualified privilege. They averred that they had the duty to the public at large in the state of Sarawak to publish Ex PIA, and the people of Sarawak, for the reasons advanced in the pleas of justification and fair comment, had a legitimate interest to receive such a publication. It is obvious from para 7 that the defendants deemed the by-election to have created tremendous public interest in view of its political implications.

A But, it is a settled law that it is for the defendants to prove the facts and circumstances which established the occasion as qualified privilege when the words complained of were published. As was said by Lord Atkinson in the case of *Adam v Ward* [1917] AC 309 at p 334:

B ... a privileged occasion is, in reference to qualified privilege, an occasion where the person who makes a communication has an interest or a duty, legal, social, or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it. This reciprocity is essential. (See also *Rajagopal v Rajan* [1972] 1 MLJ 45 and *Maidstone Pte Ltd v Takenaka Corp* [1992] 1 SLR 772).

C In the instant case, the defendants claimed to have a duty to the people of Sarawak to communicate Ex PIA and the people of Sarawak had a corresponding duty to receive. From the pleading, the defendants appear to rely on those particulars given for the defences of justification and fair comment. Briefly, those particulars deal with:

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- (i) the Oya constituency by-election and its implications to the political climate of Sarawak;
  - (ii) the alleged involvement of the plaintiff in the purported political furore; and
  - (iii) the purported actions of the plaintiff whilst as the Chief Minister of Sarawak.

E Having considered the evidence adduced in this case, I am not satisfied that the defendants have established that they owe a duty to the people of Sarawak to communicate Ex PIA. Firstly, apart from DW5 (the third defendant), none of the witnesses for the defendants expressed any reason why Ex PIA should be communicated to the people of Sarawak. And as for  
F the evidence of DW5, he went to a great length in describing what he saw and heard while on a short visit to the Oya constituency during the dying hours of the campaign period for that by-election. But, I was not convinced by DW5 that Ex PIA was a statement which he was obliged to communicate to the people of Sarawak. In all, DW5 only emphasized that the by-  
G election had generated great public interest. But, a matter of public interest does not necessarily entitle anyone to assume a duty to communicate it to others especially if any statement related to that matter may be libellous. Further, journalists, editors and newspapers do not have any special positions so as to entitle them to rely on the defence of qualified privilege on any matters which they may publish.

H Public interest and public benefit are necessary... but not enough without more. There must be a duty to publish to the public at large and an interest in the public at large to receive the publication and a section of the public is not enough (Stephenson LJ at p 327 in *Blackshaw v Lord* [1983] 2 All ER 311; see also *Adam v Ward* [1917] AC 309 ; *Arnold v King Emperor* (1914) 30 TLR 462).

I Secondly, although the Oya by-election might have generated a lot of public interest, such event did not per se evolve itself into a privileged one; unless, of course, it could be shown that Ex PIA was a report on the by-

election and that it was confined to the voters of the Oya constituency. But I do not think that was the case as there was no specific pleading to that effect. After all, the defendants claimed to owe a duty to the people of Sarawak, and not only to the voters of the Oya constituency.

Thirdly, the plaintiff was not even the candidate for the by-election. It was only the conclusion of the defendants that the by-election was a proxy fight between the plaintiff and the present Sarawak Chief Minister. I failed to find any convincing evidence that such a conclusion was correct. The plaintiff denied it, and such denial remained unrebutted.

Fourthly, in view of my findings on the particulars given for the defences of justification and fair comment in this judgment, it is therefore obvious that the defendants have failed to establish that the occasion upon which Ex PIA was published was a privileged one. Here, it is to be noted that in his submissions, learned counsel for the defendants admitted that (and I quote), 'the law does not recognize an interest strong enough to give rise to a duty to communicate in the press'. It was, therefore, conceded that there is no general media privilege under common law. But, learned counsel went on to submit without citing any authority that, on special facts, the defence of qualified privilege could exist for newspapers, publishers and editors. Perhaps learned counsel was having in mind the qualification stated in *Blackshaw*. However, in the present case, those 'special facts' as outlined by learned counsel in his submissions are either irrelevant to the publication of Ex PIA, or pure conjectures devoid of evidence. It appears to me that the 'special facts' outlined are more on the relationship between the plaintiff and the present Sarawak Chief Minister. But, the latter is not a party to the present action, nor is he being sued for making any defamatory remarks on the plaintiff. So I fail to see what interest or obligation the defendants have to the people of Sarawak and vice-versa.

Accordingly, I find on the balance of probabilities that the defence of qualified privilege fails.

In the course of the trial, there was an initial reference by the counsel for the defendants that Ex PIA was a reply to an earlier attack. But such a stand was not reflected by the pleading. Upon objection by the learned counsel for the plaintiff, the learned counsel for the defendants did not therefore pursue that line of defence. It is, therefore, not necessary for me to rule on that issue.

*(v) Issue (e)*

In view of my conclusions on the defences of the defendants on the pleas of fair comment and qualified privilege, it may not be necessary for me to deal with this issue of malice as contained in para 2 of the reply. Nevertheless, in the event that I may be wrong in my earlier conclusions, prudence dictates that I should consider this issue as well.

The particulars given by the plaintiff on the allegation of malice were as follows, in summary:

- A (i) that the words complained of were grossly defamatory of the plaintiff;
- (ii) that the defences of justification and fair comment disclose no or no sufficient grounds for believing that the said allegations were true or fair;
- (iii) that there was no basis for the plea of qualified privilege;
- B (iv) that the allegations were scandalous and sensational in nature and of the frequency of the publication; and
- (v) that the words complained of were published knowing them to be false or that they were published recklessly with no genuine good intention but with the sole or primary motive of gratifying readers with scandalous and sensational material.

C It is a settled law that malice can be established by way of intrinsic and extrinsic evidence.

Express malice was given a broad meaning by our then Supreme Court as malice in the popular sense or desire to injure the person who is defamed (see *S Pakianathan v Jenni Ibrahim* [1988] 2 MLJ 173). Instances of malice have been accepted by our courts as ill-will or spite or some previous quarrels or bad relationships or any indirect or improper motive in the mind of a defendant at the time of publication and actuating it. Malice can defeat both defences of qualified privilege and fair comment (see *Rajagopal's* case). Malice can also be inferred where a defendant made a defamatory statement knowing it to be false, or he did not believe what he published was true, or that he made it recklessly, not caring whether it was true or false; or where he deliberately stopped short in his inquiries in order not to ascertain the truth. Generally, honest belief to the truth of the statement is sufficient to negate malice. But, if it can be shown that the dominant motive of a defendant in making the statement was to vent personal spite or the desire to injure or to obtain private advantage or some other purposes rather than in the exercise of the relevant duty, then honest belief itself is not sufficient to rebut express malice. Further, where a defendant's desire to comply with the relevant duty or to protect relevant interest is not the significant part for his reason in publishing the defamatory statement, express malice can be inferred. But in the first place it is for the plaintiff to prove affirmatively that the defendant did not believe what he published was true or was indifferent to the truth or falsity of the statement. Yet, malice may also be inferred where the defendant's publication incorporated defamatory matter which was not really necessary to satisfy the duty or protection of interest giving rise to the privileged occasion (see *Horrocks v Lowe* [1975] AC 135 and *Maidstone Pte Ltd v Takenaka Corp* [1992] 1 SLR 772). Malice may also be inferred either from the terms of the communication itself as, for example, where the language is unnecessarily too strong for the occasion and circumstances (see *Abdul Rahman Talib v Seenivasagam & Anor* [1965] MLJ 142).

I In this case DW5, the third defendant, testified that Ex PIA was published as he found that it was a reply to an accusation made against the

Barisan Nasional which appeared in the Sarawak Tribune ('Ex D5A') with the heading of 'Tun sad about hatred in Oya'. He also said that he believed in the contents of Ex PIA. However, DW5 admitted that before publishing Ex PIA he did not seek any verification from the plaintiff. And nothing was shown by DW5 that he did any form of verification as to the contents of Ex PIA before proceeding to publish it. He even published it in toto. But, that stand taken by DW5 took a turn when he said under cross-examination that Ex PIA was published not solely based on Ex D5A. He went on to explain under re-examination that Ex PIA was a letter to the editor and its publication, as in such type of letters, would be based on whether it was a matter of public interest and on the factual assessment of the situation.

Having considered the evidence as a whole in this case, in particular the evidence of DW5, I could only conclude that DW5 published Ex PIA not knowing whether the contents represented the truth. In other words, he was reckless and indifferent, to say the least, as to the truth of Ex PIA. I could not find from his evidence that he had the honest belief in the truth of the contents of Ex PIA. I also noted the shift in his stand as to the reason for the publication of Ex PIA. Initially, it was due to the attack by Ex D5A and that Ex PIA was a reply. But, when it was made plain to him that Ex PIA made no direct reference to Ex D5A he began to crawl out of the situation by saying that he did not say that it (Ex D5A) was the only reason. He therefore went on to the issues of public interest and factual assessment. With such a stand, it is not far-fetched to say that in publishing Ex PIA DW5 could not have any definite reason, let alone the honest belief in the truth of its contents. After all, DW5 did say that it was his personal view that the Oya by-election was a show of strength between two factions.

I am also not convinced that Ex PIA was published in response to Ex D5A. In the first place, Ex D5A had nothing to do with the defendants. Nothing was also shown that the defendants were the mouth-pieces of any of the parties referred to in Ex D5A. So for DW5 to say that Ex PIA was a reply to Ex D5A and thus he published it, could not be a ground to conclude that he (the third defendant) did not have the element of malice in publishing Ex PIA. Furthermore, if DW5 had honestly in his mind Ex D5A before authorizing the publication of Ex PIA then, the least he could have done, if he was fair on the issue, was to make a reference to Ex D5A by way of editor's note at the end of Ex PIA. But, he did not do so leaving readers of his newspaper without the benefit of such information before making their conclusions after reading Ex PIA. I am also of the view that DW5 attempted to link Ex PIA with Ex D5A due to the existence of the phrase 'what is the basis' in para 8 of Ex PIA. But, the whole paragraph must be read whether any link can be found. In this case, DW5 agreed that Ex D5A did not state that the plaintiff accused the Sarawak Chief Minister of splitting the unity of the people, nor did it say that the plaintiff was making a statement against the Chief Minister for creating hatred and

- A bitterness amongst the Melanaus. Thus, it cannot be said that by that mere phrase Ex PIA has reference to Ex D5A.

It is also my finding on the balance of probabilities that, in publishing Ex PIA in toto the dominant motive of the third defendant was more for the purpose of the by-election and not to comply with the relevant duty or for the protection of relevant interest. This could be noted from the contents of Ex PIA itself. It was, in essence, a letter with the sole purpose of putting the plaintiff to public ridicule and contempt just because of his presence during the nomination day. I could not accept as well the contention that it was in the public interest that Ex PIA was published. The contents of Ex PIA could have created more ill-feelings rather than any calming effect. Neither did it provide any beneficial nor truthful information to the public. It went for assumptions and speculations.

- C I have also noted that DW5 testified that no apology was issued as (and to quote him) 'the management of the People's Mirror was firm in supporting what was published as it was an objective view placed against other opinion which he had received'. But DW5 never disclosed nor produced such other opinions during the trial. I can only say that such a conduct confirms my view that, in publishing Ex PIA, DW5 took no precaution, was reckless and was not concerned with its truth or falsity thereby evidencing malice on his part.

- E In the submission of the learned counsel for the plaintiff, it was contended that malice could also be found from the manner in which the defendants conducted their defences before, and during, the trial. And the case of *Guisse v Kouvelis* (1946) 46 SR (NSW) 419 was cited. However I note that such an approach is based on the dicta of Jordan CJ in that case. And even in that case, the learned Chief Justice only went along the line that counsel's behaviour could be capable of being regarded as reinforcing the inference that the defendant was animated by ill-will towards the plaintiff at the time of the publication of the slander.

- F In the present case, I did find at times that the counsel for the defendants was only too eager to ridicule the plaintiff, knowing well of his former status. Perhaps this is a case of counsel ever ready to respond to the whistles of his clients, or that it is due to sheer inexperience in conducting a trial in libel action. In view of such probable inferences, I do not think it is therefore fair to adopt the dicta of Jordan CJ in this instant case.

- G It is imperative to note that the first and second defendants are corporate bodies with the third defendant ('DW5') being an employee. But, I find that the third defendant was only the employee or servant of the first defendant. However, the existence of malice on his part (the third defendant) would nevertheless infect the first defendant (see *Gatley on Libel and Slander* (8th Ed) paras 787-789). And I am satisfied, on the balance of probabilities, based on the evidence adduced, that the third defendant had malice when Ex PIA was published and therefore, in law the first defendant had that malice too.

As for the second defendant, it was not established by evidence that the third defendant was its employee or servant. Neither was it shown that the third defendant was its agent. As such, in my judgment, the plaintiff had not established malice on the part of the second defendant.

### *B Conclusion on liability*

I therefore hold, and conclude, on the balance of probabilities that all the three defendants in this action are liable. I am satisfied on the balance of probabilities that the words complained of (Ex PIA) are capable of and are defamatory of the plaintiff. Further, I am not satisfied that the defendants, or any of them, have established on the balance of probabilities any of the defences pleaded in this action.

Moreover, in respect of the first and third defendants I have found malice to exist, and thus their defences of fair comment and qualified privilege, if available, would have been defeated.

For the avoidance of doubt, I have also considered the testimonies of the other witnesses called by the defendants, although not specifically mentioned in this judgment, before coming to my conclusion on liability.

### *C Damages*

#### (i) The guiding principles:

In view of my conclusion on the issue of liability, I now deal with the prayers of the plaintiff. In this case, the plaintiff only prayed for damages for libel, injunction and costs.

It is a settled law that in a libel action, the general rule is that damages are assessed on a compensatory basis. However, in certain circumstances, exemplary damages, or punitive damages as they are otherwise described may be awarded.

Compensatory damages may include not only actual pecuniary loss and anticipated pecuniary loss or any social disadvantage which result, or may be thought likely to result, from the wrong which has been done. They may also include the natural injury to his feelings — the natural grief and distress which he may have felt at having been spoken of in defamatory terms, and if there has been any kind of high-handed, oppressive, insulting or contemptuous behaviour by the defendant which increases the mental pain and suffering caused by the defamation and may constitute injury to the plaintiff's pride and self-confidence, these are proper elements to be taken into account in a case where the damages are at large. But, these matters may not be taken into account as a reason for giving punitive damages. In short, compensatory damages may include special damages and if aggravating circumstances exist, aggravated damages can also be awarded.

It is important to remember that the defendant's conduct between the date of publication of the libel and the trial of the action may thus

- A increase the damages. In this sense, it may be said to 'aggravate' the damages recoverable as conversely, the publication of an 'apology' may 'mitigate' them. On the other hand, the defendant's conduct after the publication of the libel may also afford cogent evidence of his malice in the original publication and thus, evidence upon which 'aggravated damages' may be awarded. It should be emphasized that the sum to be awarded is
- B a single sum and that aggravated damages are intended as compensation for the plaintiff and not as a form of punishment to the defendant.' per Seah J (as he then was) in *Datuk Patinggi Abdul Rahman Ya'kub v Abang Mohammad bin Abang Anding* [1979] 2 MLJ 185 at pp 187-189.

- C It is also important to note that the damage sustained by a plaintiff in a libel action must depend substantially on the estimation in which he was previously held in the opinion of others unaffected by false statements to his discredit. It is his reputation, and not his character, that is to be considered (see *Gayley on Libel and Slander* (8th Ed) at para 1415).

- D In this case, learned counsel for the plaintiff on one hand submitted that the aggravating factors should be considered and that the amount to be awarded should reflect those factors. The aggravating factors given were:

- (i) the position and standing of the plaintiff;
- (ii) the nature of the libel;
- (iii) the mode and extent of publication;
- E (iv) conduct of defendants from the time of the publication of the libel to the time of verdict;
- (v) recklessness as to the truth of the statement made; and
- (vi) malice of the defendants.

- F I have already made my findings on items (v) and (vi) above when I was dealing with the issue of liability. I maintain those findings, and I should therefore consider their aggravating effects in awarding damages to the plaintiff.

- G As for the position and standing of the plaintiff prior to the publication of Ex PIA, there was no dispute as to his qualifications, honours and public offices attained in, and outside, Sarawak.

- H In terms of the nature of the libel it was submitted that the words complained of (Ex PIA) was extremely damaging to the plaintiff. The plaintiff in his testimony said that, after reading Ex PIA, he had heart palpitations. He had to take the medicine called 'Isodil', being a heart patient who underwent a coronary by-pass surgery in August or September 1980. The plaintiff also said that he was very sad and very distressed due to the atrocious remarks and their effect on his standing internationally, and within Sarawak. The plaintiff went on to testify that the People's Mirror, wherein Ex PIA appeared, was a daily newspaper with a wide circulation throughout Sarawak. This was not denied by the defendants.

- I With regard to the conduct of the defendants, from the time Ex PIA was published to trial no evidence was adduced. But, learned counsel for

the plaintiff urged this court to take into account the conduct of the learned counsel for the defendants in conducting the trial. I have already made my observation on this point earlier on in this judgment whereby I declined to infer malice. But, as I did find the conduct of the learned counsel for the defendants to be at times too eager to ridicule the plaintiff, I should therefore be entitled to consider such a behaviour as having an aggravating effect in terms of damages to be awarded. A B

Learned counsel for the defendants on the other hand submitted that, in considering the issue of damages, this court should consider the material facts as disclosed in the evidence, and he outlined them in 11 paragraphs. Basically, learned counsel contended that any award for damages should be nominal for the following reasons, briefly: C

- (a) that the extent of the words complained of was localized to Sarawak and thus did not affect the international standing of the plaintiff;
- (b) that the words complained of were published as a result of the actions and statements of the plaintiff;
- (c) that the plaintiff had no longer much influence on the public nor commanded public respect judging from the loss of the candidate he supported in the by-election and due to his own loss in the subsequent election. The plaintiff was also no longer invited to state and public functions; D
- (d) that the plaintiff did not respond when the Chief Minister publicly accused him of greedy for power; and E
- (e) that the plaintiff no longer held any public office when the words complained of were published.

Unfortunately, learned counsel for the defendants only addressed this court on what he wanted to be considered, without submitting whether in law those purportedly material facts should be admitted in first place in the assessment of damages. It is settled, however, that the law does not permit a defendant to lead evidence of particular acts or misconduct on the part of a plaintiff in mitigation of damages where the defendant has failed to justify the libel complained of as in this instant case, or are irrelevant and do not amount to a plea of justification (see *Bookbinder v Tebbitt* [1989] 1 All ER 1169; *Plato Films Ltd and Ors v Speidel* [1961 AC 1090]). F G

Since those purportedly material facts referred to by the learned counsel for the defendants have been ruled earlier on in this judgment to be irrelevant or not sufficient to justify the words complained of, I do not think I should allow the same items to be considered at this stage. Only item (a) above may have a basis to be considered H

(ii) *The award*

In *Cassell & Co Ltd v Broome* [1972] 1 All ER 801, Lord Hailsham at p 824 said this: I

- A In actions of defamation and in any other actions where damages for loss of reputation are involved, the principle of restitutio in integrum has necessarily an even more highly subjective element. Such actions involve a money award which may put the plaintiff in a purely financial sense in a much stronger position than he was before the wrong. Not merely can he recover the estimated sum of his past and future losses, but, in case the libel, driven underground, emerges from its lurking place at some future date, he must be able to point to a sum awarded by a jury sufficient to convince a bystander of the baselessness of the charge.
- B

It has also been said that compensation by damages in libel action is not for the damaged reputation of the plaintiff, but he gets damages because he was injured in his reputation. The damages paid is meant as a vindication of the plaintiff to the public and a consolation to him for a wrong done (see *Uren v John Fairfax & Sons Pty Ltd* (1966) 117 CLR 118; *Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Bhd & Anor* [1973] 2 MLJ 56).

- C But, it is not inappropriate to refer to previous awards before coming to a figure to be awarded. In *Datuk Patinggi Abdul Rahman Ya'kub's* case, Seah J observed that the trend in the quantum of damages awarded in the other cases reflected the positions of the plaintiffs — the higher their positions, the heavier the damages.
- D

- E In the instant case, learned counsel for the plaintiff did not indicate any figure as would be sufficient as compensation whereas the learned counsel for the defendants was bold to say that the sum payable should be nominal. Anyway, having considered the aggravating factors as discussed earlier on and which I agree to be so save for the extent of the publication of Ex PIA which I agree to be only within Sarawak since no evidence has been adduced that it was also published elsewhere and having referred to the previous decided cases as guides only I am of the view that the sum of RM100,000 as compensatory damages should be fair and adequate to vindicate the plaintiff to the public and console him for the wrong done (see *Syed Husin Ali's* case). In coming up with that figure, I have also considered that although the plaintiff was not the Chief Minister or the head of state at the time he was defamed, as in the case of *Datuk Harris bin Mohamed Salleh v Abdul Jalil bin Ahmad & Anor* [1984] 1 MLJ 97, nevertheless I am of the view that having held such high positions previously, the plaintiff would be more well-known and have a wider circle of friends thereby maintaining his 'higher' position as referred to by Seah J in *Datuk Patinggi Abdul Rahman Ya'kub's* case. I have also taken into account my finding as to the absence of malice on the part of the second defendant before making the award. But, since no application for separate assessment was made, I do not think it is necessary for me to specify the amount that should be payable by the second defendant.
- F
- G
- H

- I Since the plaintiff also prayed for an injunction and with the defendants remaining silent on the issue, I therefore grant the injunction as well.

In summary, I therefore order that the plaintiff be paid by the defendants without any order as to apportionment since no application for separate assessment was made, the following:

- (i) the sum of RM100,000 as compensatory damages together with interest at the rate of 8% pa from the date of this judgment to the date of full payment;
- (ii) costs; and
- (iii) injunction as prayed for.

*D Postscript*

The delivery of this judgment was withheld as I was waiting for the outcome of the appeal to the then Supreme Court (now the Federal Court) of another libel case, KG 150 of 1985, the judgment of which was also delivered by me. I was of the view that, since the points of law in that case were similar to the present case, guidance could then be taken for this case in the event of the earlier decision being altered, varied or reversed on points of law. However, when I resumed duty last week, I came to know that the pending appeal had been abandoned. Hence, I decided to deliver this judgment without further delay.

*Order accordingly.*

Reported by Wong Kian Kheong

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